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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,221	02/06/2002	Guy L. Clifton	26060/06	7693

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Gilbreth & Associates, P.C.
PO Box 2428
Bellaire, TX 77402-2428

EXAMINER

COMSTOCK, DAVID C

ART UNIT PAPER NUMBER

3732

DATE MAILED: 12/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/068,221

Applicant(s)

GUY CLIFTON

Examiner

David Comstock

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-13 and 26 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 14-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 June 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-5, 14, 15, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Koros et al. (5,944,658).

Koros et al. disclose a retractor and distractor system comprising a pair of elongated bodies 50, 52 each comprising a smooth, flat side surface, a retractor engagement end, i.e. the top end of each body, a surface at the bottom end of each body, an anchor guide 58, 60, and an anchor 54, 56 positioned through each anchor guide (see Fig. 1). Each anchor has a threaded portion 76, 78 for engaging bone (see Fig. 3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-5, 14, 15, 17-19, and 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mayer et al. (5,728,046) in view of Koros et al. (5,944,658)

Mayer et al. disclose a retractor comprising first arms 2,4 and second arms 1,3 pivotally connected to the first arms (see Figs. 1 and 3). First and second elongated bodies 32 are supported by the first arms. The bodies have a "second" surface, i.e. the bottom end of the bodies, a retractor engagement end 29, an anchor guide 33, and a bone-screw anchor 36. The first arms have a finger-grip section, i.e., any section of the arms is capable of being gripped by a finger. Each body has a complementary body 7 (and/or those which can be positioned in auxiliary eyelets 6), 18, and 19. (See Figs. 1 and 3 and col. 2, lines 49-50.) Mayer et al. do not disclose an anchor capable of being anchored into bone after the second surface is abutted against bone. Koros et al. disclose a similar device having anchors 54, 56 capable of being anchored into bone after the second surface, i.e. the bottom, of the bodies is abutted against bone. This configuration allows the bodies to be carefully positioned in an incision before the anchors are attached, in order to reduce trauma to surrounding tissue (see Koros et al., col. 5, line 53 – col. 6, line 22). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the retractor of Mayer et al. with an anchor capable of being anchored into bone after the second surface is abutted against bone, in view of Koros et al., in order to allow the bodies to be carefully positioned in an incision before the anchors are attached and reduce trauma to surrounding tissue.

Claims 2 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koros et al. (5,944,658) in view of Auerbach et al. (6,302,842).

Koros et al. disclose the claimed invention except for the slip resistant surface. Auerbach et al. disclose a similar device 10 having blades 30, 32 with a slip resistant surface 50 to enhance gripping and improve the effectiveness of the device (see Fig. 1 and col. 3, lines 3-5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Koros et al. with blades having a slip resistant surface, in view of Auerbach et al., in order to enhance gripping and improve the effectiveness of the device.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mayer et al. (5,728,046) in view of Koros et al. (5,944,658), as applied to claim 19 above, and further in view of Auerbach et al. (6,302,842).

The device of the combination of Mayer et al. in view of Koros et al. discloses the claimed invention except for the slip resistant surface. Auerbach et al. disclose a similar device 10 having blades 30,32 with a slip resistant surface 50 to enhance gripping and improve the effectiveness of the device (see Fig. 1 and col. 3, lines 3-5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the retractor of the combination of Mayer et al. and Koros et al. with blades having a slip resistant surface, in view of Auerbach et al., in order to enhance gripping and improve the effectiveness of the device.

Response to Arguments

Applicant's arguments filed 30 September 2003 with respect to claims 1-26 have been fully considered and are persuasive. Therefore, the rejection of these claims has been withdrawn. However, upon further consideration claims 1-5 and 14-25 have been rejected under new ground(s) set forth in this action.

Allowable Subject Matter

Claims 6-13 and 26 are allowable over the prior art of record.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Comstock whose telephone number is (703) 308-8514.



D.C. Comstock
18 December 2003

**EDUARDO C. ROBERT
PRIMARY EXAMINER**